



C.M.A.No.325 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.325 of 2018

1. P.Valliyammal
 2. K.Selvi
 3. P.Kuppusamy
- ...Appellants

Vs.

1. K.Subramanian
 2. IFFCO Tokio General Insurance Co. Ltd,
Branch Office Tulsi Chambers,
3rd Floor, 195, T.V.Swamy Road(W),
R.S.Puram, Coimbatore.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 17.11.2012 in M.C.O.P.No.723 of 2007 on the file of the MACT/III Additional District Court at Dharapuram.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Not ready in notice, for R1
Mr.J.Micheal Visuvasam, for R2



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JUDGEMENT

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Challenging the judgment and decree dated 17.11.2012 passed in M.C.O.P.No.723 of 2007 on the file of the MACT/III Additional District Court at Dharapuram, the claimants are before this Court.

2. The case of the appellants is that, on 27.08.2007 at about 08.00 pm., when the deceased Palanisamy @ Chinnaappuchi was travelling in the Minidor auto bearing Regn.No.TN-33-AY-3452, owned by the 1st respondent, insured with the 2nd respondent, along with his goods from Dharapuram to his native, as the driver of the said Minidor auto drove the vehicle in a rash and negligent manner and applied sudden brake, he lost the control and thereby the vehicle fell upside down, due to which, the said Palanisamy sustained fatal injuries all over his body and died. Therefore, the appellants/claimants, being the dependents of deceased Palanisamy @ Chinnaappuchi, have filed a claim petition claiming a compensation of Rs.10,00,000/-. After contest, the Tribunal, vide impugned judgment awarded a compensation of Rs.4,66,000/- in favour of the appellants payable by the 1st respondent/owner of the vehicle. Aggrieved with the said order, the present appeal has been preferred by the



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appellants questioning the liability of the owner.

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3. Learned counsel appearing for the appellants submitted that, before tribunal, the 1st appellant examined herself as P.W.1 and clearly deposed that, her deceased husband travelled in the above said minidor auto owned by the 1st respondent and insured with the 2nd respondent, along with goods (Corn flour) by hiring the said vehicle and due to the negligence on the part of the driver of the said vehicle, the above said accident occurred, in which, the said Palanisamy, husband of the 1st appellant and father of the 2nd & 3rd appellants, passed away due to the injuries sustained by him at the time of the said accident, for which, the appellants are entitled to claim compensation as against the respondents and in order to prove the same, P.W.2 was examined, who clearly deposed that the deceased travelled in the said minidor auto along with his goods and only due to the rash and negligent driving of the driver of the 1st respondent vehicle, the said accident happened. When both the witnesses clearly deposed that the deceased travelled in the 1st respondent's vehicle along with goods and only due to the rash and negligent driving of the driver of the 1st respondent, for which the appellants are entitled to claim



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compensation as against the 2nd respondent insurance company, however, the tribunal had fastened the entire liability as against the 1st respondent/owner of the vehicle, which is not sustainable. Further, though the 2nd respondent/insurance company allege that there was a breach of the policy, however, the 2nd respondent failed to establish the violation of policy condition by producing cogent evidence, but the tribunal had fixed the entire liability as against the 1st respondent/owner of the vehicle, which is *per se* illegal and the same necessarily needs to be interfered with. In support of his contention, the learned counsel for the appellants relied upon the decision of the Gujarat High Court in the case of ***National Insurance Co. Ltd. Vs. Lakhuben Punabhai Vaghari and others***. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that, admittedly there is a specific averment both in the FIR and the claim statement that the deceased travelled in the 1st respondent's vehicle along with his goods and only due to the rash and negligent driving of the driver of the 1st respondent, the said accident occurred, which was also witnessed by some persons. When they specifically aver that



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some persons witnessed the said accident, the appellants have not taken any steps to examine the said persons and the 1st appellant who has not witnessed the accident had examined herself as the wife of the deceased and her deposition cannot be the basis to claim compensation. Further the deposition of PW.2 who was standing in his shop and witnessed the persons travelled in the said vehicle cannot be the basis to claim that the deceased was accompanying the goods. At best, it could be inferred that the deceased was travelling in the vehicle. Further, one Vellaichamy who is alleged to have travelled along with the deceased at the time of accident, whose name is mentioned in the FIR as well as in the deposition of the PW2, has not been examined, which is fatal to the claim made by the appellants. Except the averment made in the claim statement and in the FIR, no other document was produced and no other eye witness was examined to show that the deceased travelled along with his goods as its owner in the van, which was taken for hire. Hence, in the absence of any proof, the tribunal had rightly arrived a conclusion that the appellants are not entitled to claim compensation under section 147 of the Motor Vehicles Act, 1988 and passed the present impugned



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award, fastening the entire liability as against the 1st respondent/owner of the vehicle, which does not warrants any interference of this Court.

5. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the 2nd respondent and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the deceased Palanisamy @ Chinnaappuchi is a gratuitous passenger and whether the appellants/dependents of the deceased are eligible to claim compensation at the hands of the 2nd respondent/insurance company, though the vehicle in question is insured only under an Act Only Policy.

7. P.W.1 is not an eye witness to the occurrence. P.W.2 is stated to be an eye witness to the occurrence who has spoken about the accident. However, it is to be stated that P.W.2 may be an eye witness to the accident, but it would not be within his knowledge whether the deceased was accompanying the goods as its owner.

8. Be that as it may. Though it is claimed by the claimants that the deceased was the owner of the goods, however, there is no material to



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substantiate the said fact. Further, there is also no material to substantiate the fact that the deceased had hired the vehicle to carry the goods for which he is the owner. In the absence of any connecting material between the goods and the deceased and also connecting material that the deceased had hired the vehicle to take the goods, the deceased could only be taken to be a gratuitous passenger in the vehicle and in such a scenario, the vehicle being a goods vehicle, which is covered only by an Act Only Policy, which is evident from the order of the Tribunal, the claimants would not be entitled to any compensation for the death of the deceased, who had travelled in the vehicle as a gratuitous passenger.

9. It is the consistent view of the courts that a gratuitous passenger in a goods vehicle is not entitled to claim any compensation nor could the claimants claim any compensation. In the present case, the deceased being a gratuitous passenger, in the absence of any evidence to the contra, the claimants could not claim any compensation at the hands of the insurer.

10. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal stands dismissed, confirming the award passed by the



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tribunal in M.C.O.P.No.723 of 2007 dated 17.11.2012. It is open to the appellants/claimants to recover the amount of compensation awarded by the Tribunal from the 1st respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in this appeal.

31.10.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal,
Rasipuram.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J.

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